IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 4274 of 2007(H)

AGAINST THE ORDER IN EP 1389/2004 IN
OS.1587/2001 of PRL.MUNSIFF COURT,THRISSUR

.....

PETITIONER: JUDGMENT DEBTOR NO.1

JOY DANIEL, KANNAMPUZHA HOUSE,
C/O.THOTTATHIL BHASKARAN, THOTTATHIL LANE,
EAST FORT P.O., THRISSUR.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: DECREE HOLDER

SOVEREIGN KURIES INDIA (P) LIMITED,
CHEMPUKAVU, CHELAKKOTTUKARA, THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF EXECUTION PETITIONER.

EXT.P2 TRUE COPY OF OBJECTION TO E.P.

EXT.P3 TRUE COPY OF SALE PROCLAMATION.

TRUE COPY

P.A.TO JUDGE

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M.N. KRISHNAN, J.

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W.P.C. NO. 4274 OF 2007

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Dated this the 18th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Ext.P3 sale proclamation. Ext.P3 is the sale proclamation in E.P.1389/04 in O.S.1587/01 of the Munsiff Court, Thrissur. The description of the property is shown as a double storied building having an extent of one and quarter cent. The decree holder has shown the upset price at Rs.50,000/-. Now, the contention of the judgment debtor is a threefold one; 1. That the property is worth Rs.30 lakh and it is not shown. 2. The entire property need not be sold for the purpose of realisation of the decree debt. 3.The property is mortgaged to a Bank, i.e. State Bank of India.

2. According to the learned counsel, the property is situated in a busy area in Thrissur town and it will fetch a very high value. Now, as per the amended CPC it is not obligatory on the part of the Court to fix the upset price. The

Court can show the upset price fixed by the decree holder, upset price claimed by the judgment debtor and put the property in auction. So, the executing Court is directed to show the value shown by the respective parties instead of showing its upset price.

3. So far as the second point is concerned, the property is only having an extent of 1.25 cents and it may not be possible to sell a portion of the same. Further, even according to the judgment debtor he is only having a fractional interest. It may also be shown in the proclamation that he is only having a fractional right and the judgment debtor may specify his fractional share in the property, if it is supplied, it may be shown.

4. So far as the third aspect is concerned, the Court is also directe

d to show that there is a mortgage with respect to this property in favour of a Bank. All these are necessary for a proper conduct of the sale. Therefore, the execution Court is directed not to proceed with the sale with the present

proclamation but direct a fresh proclamation to be furnished to the Court showing these details. After hearing both sides, the Court may proceed to sell the property in accordance with the provisions of C.P.C.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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